

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0277-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:16 PM on 20 September 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] [REDACTED], hereinafter referred to as "the landlord." The respondent, [REDACTED] [REDACTED] hereinafter referred to as "the tenant," did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$985.50;
 - b. An order for a payment of late fees in the amount of \$75.00; and
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 15 and 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing

date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with the application stating that she had served the tenant with notice of the hearing, by registered mail, on 27 July 2021. According to the associated tracking history, that notice was never collected by the tenant and it was returned to the landlord. Although the tenant did not receive the application, according to section 42.(6) of the *Residential Tenancies Act, 2018*, she is considered to have been served on the fifth day after mailing—01 August 2021. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended her application at the hearing and stated that she was now seeking \$1210.50 in rental arrears.

Issue 1: Rent - \$1210.50

Relevant Submissions

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 January 2021. The agreed rent is set at \$905.00, but the landlord pointed out that the tenant had been offered a promotional discount of \$130.00 each month for the first year of the tenancy, meaning that she was only required to pay \$775.00 per month. She testified that no security deposit was paid.
9. With her application, the landlord submitted a copy of her rent records showing the payments she had received from the tenant since she had moved in [REDACTED] #1). The landlord stated that \$700.00 of the tenant's monthly rent was paid on her behalf by the department of [REDACTED]
10. According to the landlord's records, she had been receiving the \$700.00 payment, each month, from [REDACTED], but she pointed out that the tenant had not been paying the remaining \$75.00.
11. The landlord also pointed out that on 30 April 2021 the tenant was charged \$835.50 for the costs of assessing and repairing a pipe that she had clogged. That amount was added to the rent that she owes. According to the records, then, the current arrears total \$1210.50 for the period ending 30 September 2021 and the landlord is seeking an order for a payment of that amount.

Analysis

12. With respect to the issue of rent, I accept the landlord's testimony and records concerning the payments she had been receiving from [REDACTED] on the tenant's behalf. The records show that for the past 5 months the tenant had not been paying the \$75.00 portion of the rent she was responsible for and she currently is

in rental arrears in the amount of \$375.00 for the period ending 30 September 2021.

13. With respect to the \$835.50 the landlord was charged to unclog the tenant's pipes, that amount is not rent and I have removed that amount from the landlord's claim. Although this Tribunal does have the authority to issue an order as compensation for damages caused by a tenant, that matter has to be clearly identified on the application and evidence must be submitted at the hearing to establish that the tenant had caused those damages and to establish the costs of repairs. There was no indication made by the landlord on her application that she was seeking compensation for damages and no evidence was presented at the hearing concerning that matter (e.g., photographs, invoices, etc.).
14. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
15. I calculate that the landlord is entitled to a payment of \$109.60 (\$300.00 owing for the period ending 31 August 2021 less a credit of \$190.40cr for September 2021 (\$775.00 per month x 12 months = \$9300.00 per year ÷ 365 days = \$24.48 per day x 20 days = \$509.60 less the payment of \$700.00 received from [REDACTED] on 01 September 2021)).

Decision

16. The landlord's claim for a payment of rent succeeds in the amount of \$109.60.
17. The tenant shall pay a daily rate of rent in the amount of \$24.48, beginning 21 September 2021, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

18. The landlord has assessed a late fee of \$75.00.

Analysis

19. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) \$5.00 for the first day the rent is in arrears, and*
- (b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

20. As the tenant has been arrears since May 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

21. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Vacant Possession of Rented Premises

Relevant Submissions

22. With her application, the landlord submitted a copy of a termination notice (■ #2) which she stated was delivered to the tenant on 11 June 2021, by the resident manager. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 22 June 2021.

23. The landlord stated that the tenant has not moved out, as required, and she is seeking an order for vacant possession of the rented premises

Analysis

24. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

25. On 11 June 2021, the date the termination notice was issued, the tenant was in arrears in the amount of \$150.00 and had been in arrears since the beginning of May 2021.
26. As the notice meets all the requirements set out in this section of the Act, and as it was properly served, it is valid.

Decision

27. The landlord's claim for an order for vacant possession of the rented premises succeeds.
28. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Hearing Expenses

29. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay that hearing expense.

Summary of Decision

30. The landlord is entitled to the following:
 - A payment of \$204.60, determined as follows:

a) Rent Owing	\$109.60
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) Total	<u>\$204.60</u>
 - An order for vacant possession of the rented premises,

- A payment of a daily rate of rent in the amount of \$24.48, beginning 21 September 2021 and continuing to the date the landlord obtains possession of the rental unit,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

29 September 2021

Date

